

FILE
Clerk's Office
SDC
Date: 2/19/05
By: F. Ortolano
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FEDERAL INSURANCE COMPANY
15 Mountain View Road
Warren, NJ 07061,

Plaintiff,

v.

FSS AUTOMATIC SPRINKLER
P.O. Box 3116
Plymouth, MA 02361,

Defendant.

CIVIL ACTION NO.

05-10308 WGY

JURY TRIAL DEMANDED

RECEIPT # 12182
AMOUNT \$ 250.00
SUMMONS ISSUED 1
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 2/16/05

Plaintiff, Federal Insurance Company, as and for its claim for relief against the defendant
herein, states:

MAGISTRATE JUDGE RBC

THE PARTIES

1. Plaintiff, Federal Insurance Company ("Federal") is an Indiana corporation with a principal place of business located at 15 Mountain View Road, Warren, New Jersey. At all relevant times, Federal was duly authorized to conduct business and issue policies of insurance within the State of Massachusetts.

2. Defendant, FSS Automatic Sprinkler ("FSS") is a Massachusetts corporation with a principal place of business located at P.O. Box 3116, Plymouth, Massachusetts. At all relevant times, FSS was engaged in the business of maintaining and servicing fire sprinkler systems.

JURISDICTION

3. Jurisdiction is founded upon diversity of citizenship pursuant to 28 U.S.C. §1332, in that plaintiff and defendant are citizens of different states, and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

4. Venue is proper pursuant to 28 U.S.C. §1391, in that the events or omissions giving rise to the claims at issue occurred in this venue, and the defendant are subject to personal jurisdiction within this District.

GENERAL ALLEGATIONS

5. Federal issued a policy of insurance to New Seabury Properties, L.L.C. for real and commercial property located at Shore Drive West, Mashpee, Massachusetts (the "Subject Property") pursuant to policy number 35388292, with effective dates from October 1, 2003 through October 1, 2004 (the "Subject Policy").

6. The Subject Property operates as a golf pro shop and restaurant and is equipped with a fire protection sprinkler system.

7. Defendant, FSS, was retained for the purpose of performing routine maintenance of the fire protection sprinkler system at the Subject Property.

8. On or about January of 2003, the fire protection sprinkler system at the Subject Property required service to repair the leakage of antifreeze from a section of the system.

9. Defendant, FSS, performed the service call in or about January of 2003 and replaced five (5) sprinkler heads.

10. While replacing the five (5) sprinkler heads, employees of FSS entered the attic space of the Subject Property and displaced several sections of insulation in the attic.

11. The displacement of insulation in the attic allowed cold air to permeate areas of the building that were not designed to be exposed to low temperatures.

12. On January 16, 2004, a water sprinkler pipe froze in the attic area of the Subject Property, causing the water sprinkler pipe to burst.

13. The area where the water sprinkler pipe froze was located in a portion of the attic that had previously been protected by insulation.

14. At the time of the loss, the insulation protecting this portion of the attic had been displaced, allowing cold air to come into contact with the water sprinkler system supply pipes.

15. As a direct result of water flowing through the broken sprinkler pipes, the Subject Property sustained water damage to its contents, and interruption of its business and other damages.

16. As a direct and proximate result of the discharge of water, Federal Insurance Company's insured sustained damages to the Subject Property in the amount of \$331,293.20.

17. New Seabury Properties, L.L.C., duly made claim under the Subject Policy for damages that resulted from the discharge of water and, upon compliance with any and all conditions precedent to such payment, Federal Insurance Company duly made payment under the Subject Policy in the amount of \$331,293.20.

18. Under and pursuant to the terms of the Subject Policy and in accordance with common law principles of equitable subrogation, Federal Insurance Company is duly subrogated to the respective rights, claims, and causes of action of New Seabury Properties against defendant, FSS.

COUNT I – NEGLIGENCE

19. Plaintiff incorporates by reference the preceding paragraphs as though they were set forth at length herein.

20. The aforementioned water damage and destruction of property was caused by and resulted from the negligent, careless and/or reckless acts and/or omissions of the defendant FSS

Automatic Sprinkler, by and through its agents, servants, representatives, workmen, employees and/or subcontractors acting with the scope and course of their employment, including, but not limited to, negligence in:

- (a) failing to properly and/or adequately train and supervise its agents, servants, representatives, workmen, employees and/or subcontractors to insure that proper means, methods, procedures and techniques were used when performing maintenance and service on the fire protection sprinkler system at the Subject Property;
- (b) failing to follow proper and accepted engineering and/or construction techniques in performing its maintenance and service of the System located at the Subject Property;
- (c) improperly removing and/or moving insulation in the attic area of the Subject Property which allowed air to circulate in areas of the attic that were not heated;
- (d) failing to properly maintain, inspect, test and/or service the System at the Subject Property;
- (e) breaching its agreement with New Seabury Properties by failing to provide services in a workmanlike manner;
- (f) failing to adhere to federal, state, and local codes and regulations relating to the maintenance, inspection and/or servicing of water fire alarm systems, including but not limited to the NFPA Standards and Regulations;
- (g) failing to warn plaintiff's insured of the danger to its property when defendant knew or should have known that its actions and/or inactions created an unreasonable risk of harm to the property of the plaintiff; and
- (h) otherwise failing to use due care under the circumstances;

As a direct and proximate result of defendant's negligence, carelessness and/or reckless acts and/or omissions, plaintiff's insured suffered damages and destruction to its property in an amount of \$331,293.20.

WHEREFORE, plaintiff, Federal Insurance Company, demands judgment against defendant FSS Automatic Sprinkler for damages in an amount of \$331,293.20, together with interest, costs, and other such relief as this Court may Order.

BY: 

PATRICK J. LOFTUS III

BBO# 303810

9 Park Street, Suite 500

Boston, MA 02108

617-723-7770

OF COUNSEL:

MARK E. UTKE
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
215-665-2164

PHILA1\2198075\1 147836.000

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) FEDERAL INSURANCE COMPANY
V. FSS AUTOMATIC SPRINKLER
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

— II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 726, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.

X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

FILED
Clerk's Office
USDC, Mass.
Date 2/14/05
By F. O'NEILL
Deputy Clerk

05 10308 WGY

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
n/a
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
n/a
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? n/a
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) _____
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? n/a
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES No OR IN THE WESTERN SECTION (BERKSHIRE FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES No
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES No (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Plymouth
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION n/a OR WESTERN SECTION _____

(PLEASE TYPE OR PRINT)
ATTORNEY'S NAME

PATRICK J. LOFTUS, III

ADDRESS 9 PARK STREET, SUITE 500 BOSTON, MA 02108

TELEPHONE NO. 617-723-7770

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

FEDERAL INSURANCE COMPANY

DEFENDANTS

FSS AUTOMATIC SPRINKLER

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)Somerset
(NJ)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)Plymouth
(MA)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

PATRICK J. LOPTUS, III
9 PARK ST., SUITE 500
BOSTON, MA 02108
617-723-7770

ATTORNEYS (IF KNOWN)

FILED
Clerk's Office
USDC, Mas
05-10308 WGY
Deputy Clerk

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

28 USC 1332(a)(1)

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 423 Withdrawal PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

\$331,293.4

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/10/05

SIGNATURE OF ATTORNEY OF RECORD

Patrick J. Loptus, III

UNITED STATES DISTRICT COURT